XI-HC-78

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A...880/... **सन्** 200 1

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	APPELLANT:	Sopsingh, S/o Sunaram Gond, Aged 22 years, R/o Tihagaon, Chauki- Vishrampuri, P.S. Keshkal, District: Bastar (C.G.)
	- Versus -	
	RESPONDENT:	State of Chhattisgarh, Through Chouki, Vishrampuri, P.S. Keshkal, District: Bastar (C.G.)

Present:

Mr. Anant Bajpai, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.**

ORAL JUDGMENT

(Delivered on 26th March, 2007)

L.C. BHADOO, J.

1. Mr. Bajpai, learned counsel for the appellant, submits that since the accused/appellant is in jail since 25th June, 2000, thereby he is in detention for about 6 years 8 months, the appeal itself may be heard finally, to which Mr. Deo, learned Additional Public Prosecutor readily agreed. Therefore, with the consent of learned counsel for the parties, the appeal is heard finally.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	2. This appeal is directed against the judgment of conviction and order of sentence dated 12-7-2001 passed by the 4th Additional Sessions Judge, Jagdalpur, in Sessions Trial No.423/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of his father namely, Sunaram Gond, sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for six months. 3. Case of the prosecution is that at about 6 p.m. of 24-6-2000 deceased Sunaram Gond returned from his agricultural field, at that time, accused Sopsingh, son of the deceased, was breaking lock of the room with a pick-axe on which, Sunaram asked him as to why he is breaking the lock, the accused became angry and attacked his father with battle-axe as a result of which Sunaram fell down and succumbed to the injuries sustained by him instantaneously. Seeing this, the mother of the accused namely, Sundari Bai raised cries, therefore, the accused ran towards the forest. Next day morning at about 10 a.m., the matter was reported in Police Chowki: Vishrampuri, Police Station: Keshkal under Ex.P-1 by Sundari Bai, mother of the accused and wife of the deceased, same was sent to Police Station: Keshkal, where the first information report Ex.P-7 was registered. The accused while in police custody gave memorandum Ex.P-2 regarding the battle-axe with which he attacked his father and in pursuance of that he got recovered the same under Ex.P-3. The Investigating Officer reached on the spot and prepared inquest Ex.P-4 on the body of Sunaram. He also seized plain soil and blood stained soil from the place of occurrence under	

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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Ex.P-5. The Investigating Officer under Ex.P-8 sent a letter to the Doctor, Community Health Centre, Vishrampuri requesting him to give his opinion as to whether the blood found on the battle-axe and mixed with sand is human blood or not. The doctor after examining the same gave his report Ex.P-8A and advised for chemical analysis. Post-mortem on the body of Sunaram was conducted by Dr. G.R. Dhaneliya (PW-6). He gave his report Ex.P-10 and opined that cause of death was haemorrhage.

4. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Kondagaon who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned 4th Additional Sessions Judge, Jagdalpur, received the case on transfer for trial.

5. The prosecution in order to establish charge against the accused examined seven witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime.

6. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforementioned.

7. We have heard Mr. Anant Bajpai, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

(24)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8. Mr. Bajpai has not disputed the homicidal death of Sunaram. Moreover, Sundari Bai (PW-1), mother of the accused & wife of the deceased, has categorically stated that the accused attacked her husband Sunaram with a battle-axe, he sustained injuries and died instantaneously. The evidence of Sundari Bai is corroborated by the medical evidence of Dr. G.R. Dhaneliya (PW-6) who conducted post-mortem and stated that injuries No.1 & 4 were serious in nature and sufficient to cause death, the death was homicidal. Therefore, it is established that the death of Sunaram was homicidal.	
	9. As far as involvement of the accused in the crime in question is concerned, whole case rests on the evidence of Sundari Bai (PW-1) who is none else than mother of the accused and wife of the deceased. Her presence at the relevant time at their house cannot be disputed. She has categorically stated that at about 6 p.m. her husband returned from the agricultural field, at that time, the accused was breaking lock of the room with a pick-axe, her husband Sunaram advised the accused why he is breaking the lock, the accused picked up the battle-axe and attacked Sunaram as a result of which Sunaram received six incised wounds, 1st & 4th wounds were on neck. The doctor has opined that these two injuries were fatal to life and were sufficient to cause death.	
	10. Mr. Bajpai argued that in cross-examination of Sundari Bai (PW-1) it has come that the accused was suffering from madness, therefore, he is entitled for the benefit of Section 84 of the Indian Penal Code.	

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	11. In order to take the benefit of Section 84 of the I.P.C. the accused is required to show by cross-examination of witnesses or by producing other evidence that at the time of commission of crime he was suffering from insanity, therefore, he was incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law. Further, as per the provisions of Section 105 of the Indian Evidence Act, 1872, burden of proving the case is on the accused and he should show that at the time of commission of crime he was suffering from insanity. 12. In the present case, Sundari Bai has stated in her evidence that on account of madness her son was not liking them. This has been stated by her on her own, not on the suggestion of counsel for the accused. Defence of insanity was never taken by the accused during trial. Apart from that, no other witness has been cross-examined on this aspect that the accused was suffering from insanity, nor the Investigating Officer has been cross-examined that the accused was suffering from insanity at the time of commission of crime. Therefore, neither the accused took defence at the time of trial that he was suffering from insanity at the time of commission of crime, nor there is any material on record whereby a reasonable inference can be drawn that in fact, the accused was suffering from insanity at the time of commission of crime. In the circumstances, argument of learned counsel for the appellant is not based on any record, therefore, same cannot be accepted. 13. No other point was argued by learned for the appellant. Moreover, Sadhuram (PW-2) & Shrawan Kumar (PW-3) have stated in their	

(26)

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	evidence that they saw the accused running away immediately after the incident carrying the battle-axe in his hand. Therefore, the above evidence establishes involvement of the accused in the crime in question. In the circumstances, we do not find any illegality or infirmity in the judgment of the trial Court. 14. In the result, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed. 15. Consequently, M.(Cri.)P.No.2560/2001 stands disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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2/24